

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7572

Petition of Agnorth BioPower, LLC for a)
Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248(j), authorizing the installation and)
operation of a farm-based methane-fueled)
electrical generating facility at the Palardy Farm)
in Alburgh, Vermont)

Order entered: 10/7/2010

ORDER RE: AMENDMENT TO CERTIFICATE OF PUBLIC GOOD

Background

On April 6, 2010, Agnorth BioPower, LLC ("Agnorth") was granted a Certificate of Public Good ("CPG") under 30 V.S.A. § 248 authorizing the installation and operation of a farm-based methane-fueled electrical generating facility at the Palardy Farm in Alburgh, Vermont.

Finding 7 of the Public Service Board's ("Board") April 6, 2010, Order stated:

The proposed digesters are designed specifically to process crops and other forms of waste. Agnorth intends to purchase crops from the Palardy Farm to use as its principal feedstock. The crop feedstock will consist of corn silage, hay crop silage, sorghum silage, winter rye and hay. The crops, which are currently under cultivation, will be grown on land owned or leased by Palardy Farm. The feedstock for the proposed digesters will also include manure from the approximately 120 cows and young stock maintained on the Palardy Farm. The crops and manure from the Palardy Farm represent at least 51 percent of the feedstock for the proposed digesters.

Finding 33 of the April 6 Order stated:

The proposed project has the potential for odor from the storage of solid feedstock for the proposed digesters. The feedstock storage will be located at least one-half mile from the nearest neighbor, and thus should not adversely affect neighbors. Liquid feedstock will be stored in a holding tank. Semi-solid feedstock will be loaded into the digester hopper and fed into the digester tanks on the same day as delivery, eliminating any on-site storage.

In a May 6, 2010, filing, the Vaillancourts, interested persons in this docket, raised concerns with regard to the accuracy of Findings 7 and 33. The Vaillancourts stated that Finding

33 is incorrect and further stated that "there are at least 12 to 15 neighbors within the one-half mile of the Palardy Farm that could be adversely affected" and that there are "neighbors within a mile east of the farm that could be impacted negatively by odors created by the storage of feedstock."

In a May 24, 2010, memorandum, the Board requested that Agnorth address whether the information reflected in Findings 7 and 33 is accurate, and if not, provide corrected information.¹

On June 2, 2010, Agnorth filed a letter stating that Finding 7 was accurate and providing clarification to Finding 33. Agnorth stated that there are neighbors within one-half mile of where the feedstock will be stored. Agnorth contended that the evidence in the record, provided by Agnorth upon which Finding 33 is based, was intended to only address the neighbors who raised concerns about the proposed project. Agnorth concluded that a more accurate statement would be that none of the individuals who have raised concerns about the proposed project own property that is within one-half mile of where the feedstock will be stored.

On June 14, 2010, the Department of Public Service ("Department") filed a letter stating that based on its review of Agnorth's June 2 filing, it remains of the opinion that the proposed project does not raise any significant issues with respect to the criteria of Section 248 and there has been no change in its determination regarding the issuance of the CPG. No other responses were received on Agnorth's June 2 filing.

In an August 18, 2010, memorandum, the Board requested that Agnorth provide additional information regarding this issue. In particular, the Board requested that Agnorth file the following information: (1) the number of residences located within one-half mile of the feedstock storage site; (2) the proximity of the nearest neighbor to the feedstock storage site; (3) the extent, if any, to which Agnorth has discussed the proposed feedstock storage site with neighbors within one-half mile of the site; and (4) an explanation as to why one-half mile is the appropriate distance to determine whether odor from feedstock storage will be a concern for neighbors.

1. The May 24 memorandum noted that, with regard to Finding 33, the Vaillancourts' comments address the location of the farm to the neighbors, while the finding addresses the location of the *feedstock storage* to the neighbors.

On September 2, 2010, Agnorth filed a letter addressing the additional information requested by the Board. Agnorth stated that there are ten residences within one-half mile of the feedstock storage site and that the nearest neighbor's home is approximately 600 feet from the feedstock storage site. Agnorth stated that it has discussed directly the proposed feedstock storage site with two of the closest neighbors who live within one-half mile of the feedstock storage site. In its September 2 filing, Agnorth attached letters from the two neighbors that indicated that they have no objection to the feedstock storage site being located near their homes. Agnorth also stated that the other neighbors are aware of the proposed project and have not raised any objections. With regard to why one-half-mile is the appropriate distance for considering odors from the feedstock storage site, Agnorth stated that it initially identified this standard because neighbor's voicing concerns for the proposed project lived more than one-half mile from the proposed site. Agnorth maintained that there should be no odors in locations beyond one-half mile from the feedstock storage site. Agnorth stated that this conclusion is based on the Palardy Farm's own experience with storing silage at the same location and on the fact that the farm has never received complaints about odors associated with existing farming operations from neighbors who live within one-half mile.

On September 13, 2010, the Department filed a letter stating that based on its review of the additional filings, it remains of the opinion that the proposed project does not raise any significant issues with respect to the criteria of Section 248.

Discussion

Given that Agnorth has corrected the evidence upon which Finding 33 was based, we conclude that Finding 33 of the April 6 Order is incorrect, and that we should amend the Order and CPG to reflect the corrected evidence.

In its June 2 and September 2 filings, Agnorth has indicated that the feedstock storage will not affect neighbors who are located at least one-half mile from the feedstock storage site. In addition, in its September 2 filing, Agnorth stated that the neighbors within one-half mile are aware of the proposed project and have not raised any objections to the feedstock storage site being located near their homes. Although the neighbors have not raised objections, any odors

from the proposed feedstock storage area do have the potential to impact neighbors living within one-half mile. While there is potential for solid feedstock storage to emit odor, it appears that the potential for odor is limited by the design of the proposed digester system, which allows for regular input.² In addition, given the purpose of the proposed digester system is to capture methane through the anaerobic digestion of feedstock, it is not in Agnorth's economic interest to allow feedstock to remain on the storage pad for significant periods of time before feeding into the proposed digesters.

Therefore, Finding 33 in the April 6, 2010, Order is deleted in its entirety and is replaced with the following finding:

33. The proposed project has limited potential for odor from the storage of solid feedstock for the proposed digesters for neighbors located within one-half mile of the proposed project. Liquid feedstock will be stored in a holding tank. Semi-solid feedstock will be loaded into the digester hopper and fed into the digester tanks on the same day as delivery, eliminating any on-site storage. Agnorth Response-2 at 3; Letter from Ebenezer Punderson, Esq., on behalf of Agnorth to Susan M. Hudson, Clerk of the Board, dated September 2, 2010.

We further conclude that the changes to Finding 33 do not raise any issues with respect to the criteria of Section 248(b), or the general good under Section 248(a). However, given the potential for odors affecting neighbors within one-half mile of the proposed project, we require, as a condition to the CPG, that Agnorth take reasonable measures to control any odors from feedstock storage during operation of the proposed project. These measures shall include feeding the solid feedstock into the digesters in a timely manner. Given that there are neighbors within one-half mile of the storage site that may be impacted by odors, and the difficulty of fully and accurately assessing the adequacy of odor-mitigation measures prior to operation, the Board will retain the authority to require any additional odor mitigation measures that the Board determines to be necessary. In addition, we require Agnorth, within 6 months and again at 12 months from the start of operations, to contact all neighbors within one-half mile of the feedstock storage site to determine whether they have any concerns about project odors. Agnorth shall file status

2. See Finding 9, Docket 7572, Order of 4/6/10 at 6.

reports with the Board confirming that the neighbors have been contacted and describing with specificity any concerns that the neighbors have raised.

While we are amending the April 6 Order to reflect corrected evidence, we are deeply concerned about Agnorth's initial representations on this matter. Agnorth's assumption that impacts were limited to neighbors who raised concerns about the proposed project is an unacceptable practice. We expect parties in Board proceedings to provide accurate information to the Board. We also specifically remind counsel that an attorney's submissions and representations to the Board must be well founded and accurate, to the best of counsel's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances.³

Accordingly, we hereby amend our April 6 Order and CPG to require:

1. Agnorth BioPower shall take reasonable measures to control any odors from feedstock storage during operation of the proposed project, including feeding the solid feedstock into the digesters in a timely manner. The Board retains the authority to require Agnorth BioPower to implement additional mitigation measures to control odor from the feedstock storage site. Within 6 months and again at 12 months from the start of operations, Agnorth BioPower shall contact all neighbors within one-half mile of the feedstock storage site to determine whether they have any concerns about project odors. Agnorth BioPower shall file status reports with the Board confirming that the neighbors have been contacted and describing with specificity any concerns that the neighbors have raised.

SO ORDERED.

3. See V.R.C.P 11(b), applicable to Board proceedings pursuant to Board Rule 2.105.

Dated at Montpelier, Vermont this 7th day of October, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 7, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.